Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)
	)
IP-Enabled Services	) WC Docket No. 04-36

COMMENTS OF INTERSTATE TELCOM CONSULTING, INC.

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Summary

Interstate Telcom Consulting, Inc. ("ITCI") believes that providers of Voice over Internet Protocol ("VoIP") and similar Internet Protocol ("IP")-enabled services must be required to pay access charges for their traffic that is originated, transported or terminated over the public switched telephone network ("PSTN"), and to contribute to the Universal Service Fund.

VoIP calls have become the functional equivalent of traditional voice telephone calls. They are marketed and furnished predominately as substitutes for domestic and international long distance voice calls; they include calls to and from telephone numbers assigned in accordance with the North American Numbering Plan and associated international agreements; they make use of the same customer premises equipment ("CPE") necessary to place and receive ordinary calls over the PSTN; and they are virtually indistinguishable, from the viewpoint of the average consumer, from traditional PSTN calls. In sum, VoIP calls constitute "telecommunications" and VoIP services constitute "telecommunications services" within the statutory definitions in Sections 3(43) and 3(46) of the Communications Act.

VoIP providers must pay the access charges that compensate local exchange carriers ("LECs") for use of their networks, and that enable LECs to continue to upgrade, operate and maintain those local exchange and exchange access networks. In addition, VoIP payment of access charges will: (1) treat all interexchange carriers in a competitively neutral manner, and minimizing incentives to evade access charges by "routing" traffic through VoIP facilities; and (2) minimize uneconomic investment by furnishing potential VoIP providers and customers with accurate feedback regarding the true costs of VoIP services.

VoIP providers must also be required to contribute to the Universal Service Fund. VoIP services are making increasingly significant use of (as well as imposing costs upon) the rural telecommunications infrastructure supported by the Universal Service Fund, and are rendered significantly more profitable and valuable because their customers can communicate with millions of rural residents and businesses connected to the PSTN due to Universal Service Fund support. In addition, requiring VoIP providers to make the same Universal Service Fund contributions as their long distance toll competitors ensures competitive neutrality, and prevents them from obtaining unwarranted pricing advantages because they do not have to recover Universal Service Fund contributions from their customers.

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Interstate Telcom Consulting, Inc. ("ITCI") submits its Comments with respect to the *Notice of Proposed Rulemaking*, FCC 04-28, released March 10, 2004 in this proceeding ("*NPRM*"). ITCI believes that providers of Voice over Internet Protocol ("VoIP") and similar Internet Protocol ("IP")-enabled services must pay access charges for their traffic that is originated, transported or terminated over the public switched telephone network ("PSTN") and contribute to the Universal Service Fund. In other words, VoIP and similar IP-enabled service providers must be required to pay their fair share of the costs of the PSTN facilities which they use and from which they benefit.

Interstate Telcom Consulting, Inc.

ITCI is a telecommunications consulting firm located in Hector, Minnesota. Its five principal employees have over 145 years of collective experience in the telecommunications industry. ITCI has served rural telephone companies continuously since it commenced operations in April of 1981. ITCI performs a variety of telecommunications consulting services for rural telephone companies, including cost separation studies, revenue forecasting, access tariff development, depreciation studies, continuing property record maintenance, traffic engineering and analysis, Carrier Access Billing System ("CABS") billing and reviews, long distance consulting, National Exchange Carrier Association ("NECA") reporting, average schedule settlements, access service requests ("ASRs"), AOCN services, SOA services for local number portability, circuit provisioning, business plans, and exchange acquisition assistance.

ITCI's rural telephone company clients range in size from approximately 40 access lines to approximately 19,500 access lines, and are located primarily in the states of Minnesota, Wisconsin, Michigan, Iowa, South Dakota, Ohio and Montana. A list of the seventy rural telephone company clients that ITCI is representing in this proceeding is attached.

VoIP Service Is A Telecommunications Service

VoIP services are marketed and furnished predominately as substitutes, alternatives, and competitors to long distance voice calls. They are advertised and provided primarily as inexpensive ways to make domestic and international toll calls, including calls to telephone numbers assigned in accordance with the North American Numbering Plan and associated international agreements. Generally, the parties to VoIP calls are not required to use customer premises equipment ("CPE") different from the CPE necessary to place and receive ordinary calls over the PSTN. Moreover, from the viewpoint of the average consumer, current VoIP technology and voice quality have rendered VoIP and traditional PSTN calls virtually indistinguishable from each other. In other words, even though IP and PSTN networks have technical and administrative differences, users increasingly are unable to discern the types or identities of the networks and facilities over which their voice calls are carried. Hence, VoIP calls have become the functional equivalent of traditional voice telephone calls.

VoIP calls transmit, between or among points specified by their users, information of the users' choosing, without change in the form or content of the information, as sent or received. Virtually all VoIP services are being offered for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. Hence, VoIP calls constitute "telecommunications" and VoIP services constitute "telecommunications services" within the statutory definitions in Sections 3(43) and 3(46) of the Communications Act. Even if some VoIP services offer different supplemental calling options than PSTN voice services, their core voice services remain telecommunications services.

On May 19, 2004, the New York State Public Service Commission ("NYSPSC") determined that Vonage Holdings Corporation's ("Vonage's") VoIP service is a competitive telephone service that "enables subscribers to complete telephone-like calls to other subscribers over the Internet and to subscribers of local telephone companies using landline networks." State of New York Public Service Commission, Press Release No. 04038/03C1285 (Rochester, NY 5/19/04). Stating that it did not wish to "create unfair regulatory advantages for some providers over others," the NYSPSC required Vonage to obtain a Certificate of Public Convenience and Necessity like other telecommunications carriers. At the same time, the NYSPSC indicated that its ultimate regulation would "target core public policy concerns without unnecessarily interfering with the free flow of markets and the development of innovative services and technologies."

The concerns of some Commissioners about limiting the growth and development of IP-enabled services by imposing expensive and burdensome Title II common carrier regulation upon them can be alleviated by forbearing from unnecessary regulation pursuant to Section 10 of the Communications Act. At the same time, incentives to take unfair advantage of loopholes and arbitrage opportunities in the existing regulatory system by routing traditional long distance toll traffic wholly or partially over VoIP facilities can be minimized by forbearing also (in a competitively neutral manner) from imposing traditional Title II regulatory requirements upon

LECs and interexchange carriers where such requirements are no longer necessary due to the increasing competition from wireless and VoIP services. However, in addition to the basic interconnection and public safety obligations that should be required of all carriers, VoIP and other IP-enabled voice providers should required to pay access charges and to contribute to the Universal Service Fund.

VoIP Providers Must Pay Access Charges

Access charges compensate LECs for use of their networks, and enable the continued upgrade, operation and maintenance of local exchange and exchange access networks. As the Commission is well aware, local exchange networks (and particularly the "last mile" segment of local exchange networks) are the most difficult and expensive portion of the PSTN to construct, maintain and operate. In many rural areas served by ITCI's clients, this "last mile" segment extends for 10, 20 or more miles through sparsely-populated and sometimes rugged terrain.

Imposing access charges upon VoIP providers will result in their payment of equitable compensation for their use of the PSTN without burdening them with excessive costs. During recent years, access charge revenues have declined substantially, dropping from $21.423 billion in 1997, to $18.449 billion in 1998, to $18.105 billion in 1999, to $17.017 billion in 2000, to $15.096 billion in 2001. See *Universal Service Monitoring Report*, CC Docket No. 98-202 (2003), Table 1.2, Telecommunications Industry Revenues by Service. Some of these reductions are the result of the CALLS Order[1] and the MAG Order[2]; others are the result of efforts by

[1] *Access Charge Reform, Price Cap Performance Review for LECs*, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, *Low-Volume Long-Distance Users*, CC Docket No. 99-249, Eleventh Report and Order, 15 FCC Rcd 12962 (2000) (CALLS Order); *Access Charge Reform, Price Cap Performance Review for LECs, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service,* CC Docket Nos. 96-262, 94-1, 99-249, 96-45, Order on Remand, FCC 03-164 (rel. July 10, 2003).

[2] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 00-256, 96-45, 98-77, 98-166, Second Report and

LECs and regulators to restructure and reduce access rates to eliminate alleged "implicit" subsidies. At present, interstate access charges are set at just and reasonable levels that are affordable by interexchange carriers (including VoIP providers).

ITCI agrees with the Commission that, as a policy matter, any service provider that sends traffic to or through the PSTN should be subject to similar compensation obligations, irrespective of where the traffic originates. *NPRM* at para. 61. As indicated above, VoIP providers are marketing and furnishing the functional equivalent of interstate and international toll service, and satisfy the statutory definition of "telecommunications carriers." Therefore, the Commission can readily require them to pay access charges under the existing language of Section 69.5(b) of its Rules if they originate, transport and/or terminate traffic over the PSTN. Moreover, the imposition of access charges upon VoIP providers would serve the public interest by: (1) equitably compensating LECs for the use of their networks, and enabling them to continue to invest in and upgrade their critical and expensive "last mile" infrastructure; (2) treating all interexchange carriers in a competitively neutral manner, and limiting incentives to evade access charges by "routing" traffic through VoIP facilities; and (3) minimizing uneconomic investment by furnishing potential VoIP providers and customers with accurate feedback regarding the true costs of their VoIP services.

Compensation of LECs. Access charges comprise one of the three primary revenue streams[3] of ITCI's clients and other rural telephone companies. As VoIP traffic grows while many VoIP providers pay no access charges, rural telephone companies are losing more and more of their critical access revenues. When VoIP providers do not pay for their use of LEC

Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001).

[3] The other two revenue streams are local service charges (including subscriber line charges) and universal service support.

networks, LECs must make up for their resulting revenue shortfalls by raising their local service rates and/or by increasing the access charges they impose upon non-VoIP interexchange carriers. If LECs cannot recover the full amounts of these revenue shortfalls, their ability to maintain, upgrade and expand their infrastructure will be impaired. In fact, if LECs are forced to watch VoIP providers ride free on their networks while pursuing profitable long distance opportunities, LECs will have little incentive to continue to construct, upgrade, maintain and operate their expensive "last mile" facilities.

Competitive Neutrality. VoIP providers should pay the same access charges as the traditional interexchange carriers with whose functionally equivalent services they are competing for customers. This will ensure that VoIP and other long distance service providers compete on a level playing field, and that VoIP providers do not receive an unjust and unreasonable preference over competing toll service providers that must pay access charges. As indicated above, not only does the nonpayment of access charges by VoIP providers enable them to use PSTN facilities for free, but also further disadvantages their interexchange carrier competitors by requiring them to pay higher access charges because of the VoIP free ride.

In addition, subjecting VoIP providers to access charges will eliminate non-economic incentives for traditional interexchange carriers to route calls through IP facilities solely or primarily for the purpose of taking advantage of arbitrage opportunities to reduce their access charges or evade them altogether.

Economic Feedback. The most efficient, effective and equitable way to evaluate the profitability and viability of VoIP providers is to require them to bear all of the costs of providing their services (including the payment of access charges and other costs of using the facilities of other entities). Allowing VoIP providers to avoid access charges merely delays the inevitable day, and makes it likely that their investors will suffer greater losses, and that their employees and customers will experience greater disruptions, if their business plans are not economically viable in the long run. In other words, VoIP providers should pay access charges and similar expenses for using the resources of others, so that their service offerings can be evaluated at any early date on the basis of accurate economic signals, and so that resources will not be devoted to VoIP services in lieu of alternatives that produce greater economic welfare.

ITCI is aware of VoIP vendor claims that VoIP networks will produce cost savings of as much as 30 percent. However, it is not clear how much of these alleged cost savings are the result of efficiencies inherent in VoIP technology, and how much they are due to the fact that most VoIP providers are not paying access charges for their use of the PSTN and are not contributing to the Universal Service Fund. It is also not clear whether the absence of economies of scale in sparsely populated areas will limit or preclude the realization of significant VoIP efficiencies in Rural America.[4] The best economic solution is to require VoIP providers to pay for all of the resources they use (including access to the PSTN), and let them compete in the marketplace on the basis of their packet-mode efficiencies, service quality, prices, and service options.

For any and all of the foregoing reasons, VoIP providers that use the PSTN must be required to pay access charges for their usage.

[4] For example, whereas packet technology can significantly reduce the numbers and costs of the loop and trunk facilities needed to serve the tens of thousands of customers along the K Street corridor in Washington, DC, it is not clear whether it can produce similar efficiencies and cost savings within the towns and rural clusters served by a 2,500-line rural telephone company.

VoIP Providers Must Contribute To The Universal Service Fund

Section 254(d) of the Communications Act requires that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service." It also permits the Commission to require "[a]ny other provider of interstate telecommunications . . . to contribute to the preservation and advancement of universal service if the public interest so requires." 47 U.S.C. Sec. 254(d).

Traffic originated, transported and/or terminated by VoIP providers is making increasingly significant use of the rural telecommunications infrastructure supported by the Universal Service Fund, as well as imposing costs upon it. Moreover, VoIP services are substantially more valuable (and, hence, capable of generating larger revenues and profits) because VoIP customers can communicate with millions of rural residents and businesses that might not otherwise be connected to the PSTN without the support provided by the Universal Service Fund. In light of the facilities and benefits they enjoy as a result of the Universal Service Fund, VoIP providers should be required to contribute to it.

In addition, requiring VoIP providers to make the same Universal Service Fund contributions as their long distance toll competitors ensures competitive neutrality. It prevents VoIP providers from gaining unwarranted advantages by the appearance of lower rates due to the fact that they do not make Universal Service Fund contributions and/or recover them from their customers.

ITCI believes that VoIP providers are "telecommunications carrier[s] that provide interstate telecommunications services," and are therefore required to contribute to the Universal

Service Fund on the same basis as the interstate telecommunications carriers against which they compete. Even if the Commission and the courts determine, for any reason, not to classify VoIP providers as "telecommunications carriers," they are nonetheless "providers of interstate telecommunications" that may be required to contribute to the Universal Service Fund. In this latter instance, the public interest requires the Commission to exercise its discretion to include VoIP providers as contributors to the Universal Service Fund because of the services and other benefits they enjoy, as well as to preserve competitive neutrality.

Conclusion

ITCI believes that all service providers originating, transporting or terminating traffic on the PSTN should pay equitable compensation for their use thereof. In particular, VoIP providers should be required to pay access charges for the traffic that they originate, transport and/or terminate on the PSTN, and to contribute to the Universal Service Fund.

Respectfully submitted,
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Interstate Telcom Consulting, Inc.
List of Participating Companies

24-7 Telcom, Inc.
Ace Link Telecommunications, Inc.
Ace Telephone Association
Ace Telephone Company Of Michigan
Amery Telcom Inc.
Amherst Telephone Company
Arrowhead Communications Corp.
Bayland Communications, Inc. (CLEC)
Bayland Telephone, Inc.
Bergen Telephone Company
Bernard Telephone Company
Bloomer Telephone Company
Bruce Telephone Co., Inc.
Cheqtel Communications, Inc.
Chequamegon Communications Cooperative, Inc.
Chibardun Telephone Cooperative, Inc.
Citizens Telephone Cooperative, Inc.
City Of Barnesville Municipal Telephone
Clear Lake Telephone Company, Inc.
Cochrane Cooperative Telephone Co.
Coon Valley Farmers Telephone Co., Inc.
Delavan Telephone Company
Eagle Valley Telephone Company
Farmers Independent Telephone Company
Farmers Mutual Telephone Co. (Ohio)
Felton Telephone Co., Inc.
Granada Telephone Company
Hager Telecom, Inc.
Harmony Telephone Company
Hillsboro Telephone Company, Inc.
Home Telephone Company
Indianhead Telephone Company
Lakedale Telephone Company
Lakefield Communications, Inc.
Lakefield Telephone Company
Lakeland Communications Inc.
Lavalle Telephone Cooperative, Inc.
Lemonweir Valley Telephone Co.
Loretel Systems, Inc.
Lost Nation-Elwood Telephone Co.
Luck Telephone Company
Mabel Cooperative Telephone Company
Madelia Telephone Company
Manawa Telephone Co., Inc.
Marquette-Adams Telephone Cooperative, Inc.
Milltown Mutual Telephone Co.
Minburn Telecommunications, Inc.
Minford Telephone Company
Minnesota Valley Telephone Co., Inc.
Mount Horeb Telephone Company
Nelson Telephone Cooperative
Niagara Telephone Company
Northeast Telephone Company
Pine Island Telephone Company
Price County Telephone Company
Richland-Grant Telephone Coop., Inc.
Sharon Telephone Company
Siren Telephone Co., Inc.
Sleepy Eye Telephone Co.
Somerset Telephone Co., Inc.
Spring Grove Cooperative Telephone Co.
Spring Valley Telephone Co., Inc.
State Long Distance Telephone Co.
The Mosinee Telephone Company
Tri-County Telephone Cooperative, Inc.
Union Telephone Company
Vernon Telephone Cooperative, Inc.
West Wisconsin Telcom Cooperative, Inc.
Winthrop Telephone Company
Wittenberg Telephone Company